

**APPLICATION FOR THE REVIEW OF DISCHARGE
FROM THE ARMED FORCES OF THE UNITED STATES**

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

OMB No. 0704-0004
OMB approval expires
Oct 31, 2009

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Service Directorate (0704-0004). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. **PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.**

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.

ROUTINE USE(S): None.

DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA *(The person whose discharge is to be reviewed).* **PLEASE PRINT OR TYPE INFORMATION.**

a. BRANCH OF SERVICE <i>(X one)</i>		<input type="checkbox"/> ARMY	<input type="checkbox"/> MARINE CORPS	<input checked="" type="checkbox"/> NAVY	<input type="checkbox"/> AIR FORCE	<input type="checkbox"/> COAST GUARD
b. NAME <i>(Last, First, Middle Initial)</i> Burden, Thomas Michael			c. GRADE/RANK AT DISCHARGE SA		d. SOCIAL SECURITY NUMBER 621-32-2069	
e. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON NAMED IN ITEM 11 <i>(Forward notification of any change in address.)</i> 1520 California street Klamath Falls, OR 97601					f. TELEPHONE NUMBER <i>(Include Area Code)</i> 805-215-0959	
					g. E-MAIL mammoth_ripper@yahoo.com	
					h. FAX NUMBER <i>(Include Area Code)</i>	

2. DATE OF DISCHARGE OR SEPARATION <i>(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)</i> 20030307	4. DISCHARGE CHARACTERIZATION RECEIVED <i>(X one)</i>		5. BOARD ACTION REQUESTED <i>(X one)</i>	
	<input type="checkbox"/> HONORABLE		<input type="checkbox"/> CHANGE TO HONORABLE	
	<input type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS		<input checked="" type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS	
	<input checked="" type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS		<input type="checkbox"/> CHANGE TO UNCHARACTERIZED <i>(Not applicable for Air Force)</i>	
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION USS Peleliu (LHA-5) San Diego, CA	<input type="checkbox"/> BAD CONDUCT <i>(Special court-martial only)</i>		<input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION:	
	<input type="checkbox"/> UNCHARACTERIZED			
	<input type="checkbox"/> OTHER <i>(Explain)</i>			

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST *(Continue in Item 13. See instructions on Page 3.)*
I desire an upgrade so that I may fulfill my incomplete obligation to serve which was interrupted by my misconduct while on active duty in the United States Navy. Please see the Attachment 1.

7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD) AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: *(Continue in Item 14. If military documents or medical records are relevant to your case, please send copies.)*
Atch 2: DD214; Atch 3: Certificate of Appreciation; Atch 4: Certification of Appointment to E-3; Atch 5: Welcome Letter Recruit Command; Atch 6: Unverified CAT-ASVAB Test Score Report; Atch 7: Oregon Institute of Technology (OIT) Transcripts; Atch 8: OIT Newspaper Articles (Atch 8.1: Student Class Candidate, 11Apr07; Atch 8.2: Elected Representative, 25May07; Atch 8.3 Burden Speaking on Safety, 4May06); Atch 9: Mammoth Mountain Ski Area Award Recommendation; Atch 10: Mammoth Mountain Ski Area Award to Burden; Atch 11: OIT 2008 Soccer Team Coach Assessment of Burden in Winning Season; (Item #14)

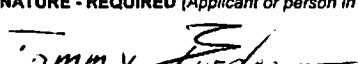
9. TYPE OF REVIEW REQUESTED *(X one)*

<input type="checkbox"/>	CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR <i>(counsel/representative)</i> WILL NOT APPEAR BEFORE THE BOARD.
<input checked="" type="checkbox"/>	I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.
<input type="checkbox"/>	I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO <i>(enter city and state)</i> <small>(NOTE: The Navy Discharge Review Board does not have a traveling panel.)</small>

10.a. COUNSEL/REPRESENTATIVE <i>(If any) NAME</i> <i>(Last, First, Middle Initial)</i> AND ADDRESS <i>(See Item 10 of the instructions about counsel/representative.)</i> The Law Firm of Puckett & Faraj, PC Haytham Faraj, Esq. 2181 Jamieson Ave Suite 1505, Alexandria, VA 22314	b. TELEPHONE NUMBER <i>(Include Area Code)</i> 760-521-7934
	c. E-MAIL haytham@puckettfaraj.com
	d. FAX NUMBER <i>(Include Area Code)</i> 202-318-7652

11. APPLICANT MUST SIGN IN ITEM 12.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name *(print)* and relationship by marking a box below.

<input type="checkbox"/> SPOUSE	<input type="checkbox"/> WIDOW	<input type="checkbox"/> WIDOWER	<input type="checkbox"/> NEXT OF KIN	<input type="checkbox"/> LEGAL REPRESENTATIVE	<input type="checkbox"/> OTHER <i>(Specify)</i>
---------------------------------	--------------------------------	----------------------------------	--------------------------------------	---	---

12. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. <i>(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)</i>		CASE NUMBER <i>(Do not write in this space.)</i>
a. SIGNATURE - REQUIRED <i>(Applicant or person in Item 11 above)</i> 	b. DATE SIGNED - REQUIRED <i>(YYYYMMDD)</i> 2009 09 01	

13. CONTINUATION OF ITEM 6, ISSUES (If applicable)

Please see Attachment #1.

14. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)

(Atch 11.1: Burden Named Conference Player of the Week, 8Sep09); Atch 12: Letter Defining Family Counseling, Kathy Lockridge, M.Div; Atch 13: Parents Affidavit; and Letters of Recommendations: Atch 14: Jane Rider, Director of Student Development OIT; Atch 15: Albert H. Jones, Executive Director, Carden Hall School, Newport Beach, CA; Atch 16: Walter A. Shubin, Former Naval Officer; Atch 17: Peter Fuerbringer, Former Marine Corps; Atch 18: Chris Frazier, Student Programs Coordinator, Oregon Institute of Technology;

15. REMARKS (If applicable)

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

ARMY

Army Review Boards Agency
Support Division, St. Louis
9700 Page Avenue
St. Louis, MO 63132-5200
(See <http://arba.army.pentagon.mil>)

NAVY AND MARINE CORPS

Naval Council of Personnel Boards
720 Kennon Street, S.E.
Room 309 (NDRB)
Washington Navy Yard, DC 20374-5023

AIR FORCE

Air Force Review Boards Agency
SAF/MRBR
550-C Street West, Suite 40
Randolph AFB, TX 78150-4742

COAST GUARD

U.S. Coast Guard
Commandant (CG-122)
2100 Second Street, S.W. Room 5500
Washington, DC 20593

SA Thomas Michael Burden, USN, XXX-XX-2069

Attachment 1: Continuation of DD 293 Block 6 and Block 8

6. Issues: Why An Upgrade or Change is Requested and Justification for the Request

I am petitioning for an upgrade of my discharge and must, therefore, set forth an argument that I hesitate to make lest I appear to fail to grasp that I bear responsibility for my conduct. In my argument to you, I am compelled to catalogue several matters in extenuation of my conduct that, even to me, appear to be excuses that fly in the face of the need to take responsibility. I do so not to excuse my conduct, but to place it in context so that I might convince you to allow me a chance at redemption.

At the age of eighteen, our society expects that its young men and women have reached a level of maturity so as to allow them to make rational and reasonable decisions. The fact is, as you are well aware, that at eighteen, many of us are far from mature, rational or reasonable. I joined the Navy with the commitment to serve but with the irrational expectation of something in return. That expectation and my immaturity caused me to make unreasonable and irrational decisions that resulted in my untimely separation from the Navy.

My misconduct in the Navy was my responsibility. There were, however, certain underlying causes that precipitated my failures in judgment and misconduct. When I first began considering the Navy, I spoke to a recruiter who explained the many options available in the Navy. He also explained that opportunities were conditioned on my ability to take and do well on the AFQT. I took the test and did exceptionally well, scoring an 87, in essence qualifying me for any job in the Navy. Despite my scores, however, the recruiter explained that if I accepted a rating of a Seaman Apprentice, after assignment to a ship, I would have more practical exposure to the ratings and would be able to quickly achieve selection to a rating where I could learn and develop a challenging and rewarding rating and skills. The reality of ship operations did not match the recruiter's promises nor the Navy's representations. And I, as a youthful and immature teenager armed with a sense of entitlement and blind to the realities of life, was too impatient and too naïve to grasp and understand that the representations of the recruiter were not binding on my command. To make matters worse, when I reported to my ship it was in dry dock, and new Seaman Apprentices were restricted to billeting on a barge while the ship underwent refit. As you know, a ship in dry docks leaves many of its crew mostly idle. Accordingly, I experienced none of the fulfillment of operating underway nor the challenges, esprit de corps, rigors and comradery of the operational Navy.

In an effort to seize upon some of the opportunities that may have been available to me, I met with the ship's career counselor who advised me, based on my high aptitude, to test for turbine mechanic. He also explained that the test had a 100% passage rate. Perhaps he said as it as encouragement, perhaps he did not quite know what the true passing numbers were, or perhaps my test was an anomaly. Nevertheless, the selection rate was not 100%. It was 77%. I missed selection by one half of one percentage point. Encouraged by the career counselor's

explanation that the passage rate is 100% and discouraged by barge billeting that was not very conducive to studying, I put minimal effort into preparing for the rating test. I do not seek to shift blame to the career counselor nor do I intend to suggest that I rated special billeting or any different conditions than those of my fellow Sailors. I am aware that Sailors frequently live in spartan conditions all over the world as they face adversity and harm. I offer these facts to place in context the mind of an immature eighteen year old who lacked the perspective necessary to understand the consequences of his actions, regardless of the catalyst for those actions.

When I failed to make selection, I became even more discouraged and convinced, in my own mind, that the truth is, at best, an elusive and shifting concept in the Navy. I had joined based on the representations of a recruiter who made it clear that with my scores I could do practically anything I wanted to do in the Navy. When that did not happen I sought and relied on the advice of a career counselor who, I am certain, intended to encourage me but unintentionally led me to not put forth the effort necessary to pass, resulting in further frustration, disappointment and angst.

In frustration, I went UA, fell in with my old peer group and smoked marijuana. Ironically, soon after I returned, we invaded Iraq. It was the service and challenge that I had sought and the test of my mettle that I joined the Navy hoping to find. Unfortunately, my misconduct resulted in my separation and with it the opportunity to serve my country and prove myself.

My discharge from the US Navy was proper in accordance with the governing regulations. Those regulations also contemplate that former service members may challenge their discharge, even when proper, based on equity. It is that reason that I invoke here.

My discharge, even though a valid reason existed meriting my separation, was not fair. I joined the Navy in good faith and in reliance on representations made by my recruiter. I have no way to prove the representations of my recruiter except by my word. I know that tangible evidence in the form of documents is more persuasive. But as you all know, there never is a paper trail for those types of representations. If there were, service members would be able to enforce promises or representations made to them before they get to a point where they must petition to remedy the harm.

Nonetheless, some competent measure of proof is available in my case when my AFQT scores are considered along with my statement of the facts surrounding my enlistment contract. I scored in the top 87% of test takers. For someone with those scores, there is rarely a reason not to receive a rating before leaving for basic training. I did not because my recruiter convinced me that there would be a better opportunity to make a selection upon reporting to a ship. When that did not

happen, I did not have the maturity or wherewithal to appropriately handle it and fell back on that which was familiar.

In raising the issue of equity, I specifically rely on the representations of my recruiter and the chain of events that flowed from those failed promises. There is little doubt that a colorable equitable argument would lie if I had proof of the promises in the form of a written contract or some other tangible evidence to prove my assertions. In the absence of such evidence, I am left with nothing but my word. In support of my veracity you have my record that on the one hand clearly establishes my misconduct while on the other hand undoubtedly proves my truthfulness. I admitted my misconduct. I accepted responsibility. I am admitting responsibility in this petition and categorically recognize that I, and I alone, am responsible for the actions I took. I understand that taking my word alone places you on the horns of a dilemma wherein your actions in approving my request results in precedent that requires you to take future actions favorable to petitioners based solely on their words. That, however, is not what I am advocating in this case.

I call on you to review my record neutrally and without any presumptions except for those that are supported by evidence in my service record or from rational inferences. With that as the starting point, you will agree that it is just as likely that I am truthful as I am not. An equal consideration of the veracity of my representation along with my scores, my performance reviews which bear no evidence of untruthfulness or lack of integrity, my admission of guilt following my misconduct, at the time it occurred, along with the recommendations attached to this petition must tip the scale in favor of believing my statements about my recruiter's conduct.

The next issue is whether my actions were reasonable in view of the representations of the recruiter. I concede that they may not have been reasonable as compared to the actions of others in society or even to all other Sailors. The analysis, however, begs a more nuanced view of what is reasonable. To arrive at a more fitting answer regarding reasonableness, the question that must be answered is whether under the totality of the circumstances my actions were reasonable when compared to other similarly situated Sailors?

I felt that I had been betrayed and lied to. And in fact, I was. I attempted to remedy the situation by engaging a career counselor which led to even more frustration after I learned that selection was not as had been explained to me. Given those factors, my age, inexperience, and level of expectation, there is no doubt that my actions were not unreasonable. But even if one were to reject the argument that my actions were reasonable to me, the measure of what is reasonable should be that of other Sailors who are similarly situated. And based on that measure of reasonableness, even if you conclude that my conduct was not reasonable, you must allow room for the argument that it is not a substantial departure from what would have been expected of others under the same circumstances and in the same situation.

Although the board does not grant upgrades based solely on post service conduct, it is one measure of answering the inquiry surrounding the issue of my conduct and unfulfilled potential during the service. Since my discharge from the U.S. Navy I have enrolled in college and am pursuing a degree in Geomatics. I will graduate in 2010. I am engaged and will soon be married. I have received accolades and praise for my dedication to doing well achieving high grades and maintaining professional conduct. In contrasting my post service conduct to that during the service, one thing is clear. It is not consistent. That lack of consistency is not merely because I have matured; I certainly have. But it is also an indicator of who I am and my potential.

In reliance on the misrepresentations of a recruiter coupled with a teenager's immaturity, I ended up with a other than honorable discharge. I accept responsibility for my actions. But it is fundamentally unfair for me to bear the entire burden because but for the misrepresentations of the recruiter, I would have achieved the same success in the Navy as I did outside the Navy or at least would not have failed to complete my enlistment and would have presumably received an honorable discharge.

As it stands, the discharge characterization I currently have violates all notions of fair play and equal justice given the power position of the recruiter over me at the time I signed the contract and my good faith reliance on his representations. Moreover, justice is hardly served when equal fault may be attributable to both parties (me and the Navy as represented by the recruiter) but only one, me, suffers the consequences of the wrong. Stated another way, if you are persuaded that I have been truthful in my representations to you, even if you disagree that my actions are reasonable, how is it fair that I will have to suffer the consequences of my unreasonable conduct while the recruiter suffers none for his deliberate deception, or is, arguably, rewarded for fulfilling a recruitment quota?

Based on the foregoing, I, by and through counsel, request an in-person hearing before the board and a favorable consideration of my petition and approval of my request for an upgrade of my discharge characterization to a general under honorable conditions.

8. In Support of this Application, the Following Attached Documents are Submitted as Evidence:

Attachment 2: SA Thomas M. Burden, DD214

Attachment 3: Certification of Appreciation to Seaman Burden

Attachment 4: Certification of Appointment to E-3

Attachment 5: Welcome Letter Commander, Navy Recruit District, Richmond, VA

Attachment 6: Unverified CAT-ASVAB Test Score Report

Attachment 7: Oregon Institute of Technology Transcripts

SA Thomas Michael Burden, XXX-XX-2069

Attachment 8: Oregon Institute of Technology Newsletter Articles

Attachment 8.1: ASOIT Class Candidate, 11Apr07

Attachment 8.2: Burden Elected ASOIT, 25May07

Attachment 8.3: Burden Speaks on Safety, 4May06

Attachment 9: Mammoth Mountain Ski Area Award Recommendation

Attachment 10: Mammoth Mountain Ski Area Award to Burden

Attachment 11: Oregon Institute of Technology 2008 Soccer Team Coach

Assessment of Burden and Team Roster

Attachment 11.1: Burden Named Conference Player of the Week, 8Sep09

**Attachment 12: Katherine L. Lockridge, Marriage, Family & Individual Therapist,
Lake Forest CA**

Attachment 13: Don and Pamela Burden, Parent Affidavit

**Attachment 14: Jane Rider, Director of Student Development, Oregon Institute of
Technology**

**Attachment 15: Albert H. Jones, Executive Director, Carden Hall School, Newport
Beach, CA**

Attachment 16: Walter A. Shubin, Former Naval Officer & Long Time Family Friend

Attachment 17: Peter Fuerbringer, Former Marine Corps & Long Time Family Friend

**Attachment 18: Chris Frazier, Student Programs Coordinator, Oregon Institute of
Technology**